



February 20, 2008

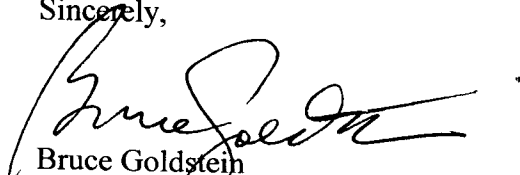
Secretary of Labor Elaine L. Chao  
United States Department of Labor  
200 Constitution Ave., NW,  
Washington, DC 20210

Re: Regulatory Information Number (RIN) 1205-AB55  
Request for an Extension of the Comment Period to 90 Days  
H-2A Temporary Foreign Agricultural Worker Program

Dear Secretary Chao,

Enclosed please find a request for extension of time for public comment on the proposed rules under the H-2A temporary foreign worker program published at 73 Fed. Reg. 8538 (February 13, 2008). The request is filed on behalf of the listed organizations, whose officials authorized their inclusion on the request.

Sincerely,



Bruce Goldstein  
Executive Director

February 20, 2008

Secretary of Labor Elaine L. Chao  
United States Department of Labor  
200 Constitution Ave., NW,  
Washington, DC 20210

Re: Regulatory Information Number (RIN) 1205-AB55  
Request for an Extension of the Comment Period to 90 Days  
H-2A Temporary Foreign Agricultural Worker Program

Dear Secretary Chao,

The proposed rules published at 73 Fed. Reg. 8538 (February 13, 2008) were announced with a public comment period of 45 days. This period is insufficient for the public to analyze such a comprehensive and complicated proposal, and to thoughtfully respond. The organizations listed below, including organizations representing the interests of U.S. farmworkers and H-2A guestworkers, request an extension of the comment period to 90 days so that they and others may have sufficient time to prepare and submit comments on the proposed rules.

Such an extension is necessary for each of the following reasons:

(1) The proposed rules constitute a comprehensive set of revisions to regulations that have been in effect without substantial modification for over two decades. Some components of the H-2A program that would be altered have been recognized as central to its statutory purpose and operation for over 55 years. The proposal takes up 49 pages of the Federal Register. It adds entirely new provisions; deletes paragraphs and subparagraphs, in whole or in part; substantially revises others; and in numerous instances, contains changes in individual words or phrases that must be painstakingly identified and analyzed for substantive impact. A careful review and analysis of the proposed rule, and thoughtful comment, cannot be accomplished in the allotted time. Substantial resources and time are required for a thorough review of the proposal and a meaningful response; the public cannot reasonably be expected to meet this time frame.

(2) The proposed rules were issued simultaneously with a notice of proposed rulemaking ("NPRM") on related Department of Homeland Security regulations, which takes up another 18 pages of the Federal Register. RIN 1615-AB65; 73 Fed Reg. 8320. That proposal must be simultaneously reviewed and analyzed, and comments submitted. The organizations maintain a strong interest in the outcome of that proposal as well and intend to comment on it.

(3) The central purpose of the provisions of the Immigration and Nationality Act

establishing and regulating the H-2A program is to protect the jobs and labor standards of domestic farmworkers. This seems to have been lost in the current proposal. Even on cursory review, it is evident that the proposed rule would eliminate or radically alter numerous provisions of the current regulations that protect U.S. farmworkers. If enacted, the proposed regulations would be expected to have severe economic ramifications on the domestic farm labor force. Such a radical departure from past treatment must be the subject of careful economic analysis that cannot be accomplished in 45 days. In particular, the proposal to throw out the current AEWR wage calculations and replace them with a new, vaguely defined methodology requires careful economic and statistical analysis. Indeed, the many unanswered questions posted by the proposed new wage methodology require careful consideration of all the ways in which the agency is considering filling in the details of the methodology and commenting on their disadvantages and advantages. Moreover, we have found it difficult to obtain the services of qualified labor economists to analyze and describe the anticipated economic effects of the new wage rates, because they cannot, consistent with their other obligations, complete this project of examining an entirely new wage methodology within 45 days. It has been difficult thus far to retain the services of other experts who could apply themselves at this moment to the many other aspects of the H-2A program revisions the agency has proposed.

(4) The subjects addressed by the H-2A program regulations are complex, far-reaching and of extraordinary public interest. The farm labor supply has been the subject of proposed legislation and numerous public hearings (excerpts of which are cited in the NPRM). These issues are embroiled in the heated, national debate over immigration reform. In the NPRM, the Department places itself, *explicitly*, in the center of this national debate, proffering the “reformed” H-2A guestworker program as a solution to the (reputedly) unmet labor needs of U.S. growers. In this, the Department has overreached, taking sides in a national debate over complex social problems and attempting to legislate its own solution by rewriting regulations meant to protect *U.S. workers* so that growers can bring in an unlimited supply of cheap foreign labor. This, of course, is not the only solution to whatever labor shortage may exist. Domestic farm laborers -- the silent hands who have toiled in the fields, tending and harvesting the nation’s food supply -- could be afforded legal status, instead. A broad coalition of grower associations and worker advocates has actively pushed for just such a proposal.

There has also been extensive debate over the mechanics and administration of a larger guestworker program. Despite the shared interests of growers and domestic farmworkers, no final resolution has been reached, in part because the issues are terribly complex. The proposal for drastic new changes in both overall approach and specific practices must be considered from a variety of perspectives.

Having thrust its regulatory authority over a small program to center stage in a furious debate over the farm labor supply, the Department must allow robust public attention and comment on the proposal. Forty-five days is impossibly short.

(5) The opportunity for public review and comment should not expire until all relevant public information has been released by the Department, and it has not. A Freedom of Information Act request for highly material H-2A wage studies that was submitted by the Economic Policy Institute and Farmworker Justice is still pending with no response from the Department, notwithstanding the agency’s agreement that the request was entitled to an

expedited response. In addition, interested parties will be filing new FOIA requests for information that is necessary to a comprehensive review, and the Department will need to respond. Further, it is our understanding that the Department has commissioned a study regarding the principal job preference for U.S. workers under the H-2A program – known as the “50% rule – but does not yet have the results of that study. Given that a Congressionally-required study of the 50% rule led the Department to continue that rule, and DOL proposes the possibility of eliminating it, interested parties should have the opportunity to review the study before submitting comments.

(6) American agriculture will not be harmed by a 45 day extension of the comment period. Currently, virtually all grower applications for participation in the H-2A program are approved. While growers desiring to exploit cheap foreign labor may be the loud voices above the din, the H-2A program’s small size, in reality, reflects that growers have had access to adequate supplies of labor. If an increased number of growers apply this year, then the Department can respond effectively without a precipitous overhaul in the regulations, enacted after an inadequate comment period. On the other hand, the sudden adoption of the dramatic changes in the proposal would severely harm farmworkers, lowering their wage rates and denying them the housing to which they are currently entitled. At the same time, available U.S. workers may be denied employment, because the proposed regulations curtail recruitment. By contrast, the AgJOBS legislation, which the Department discusses in its explanation of the proposal, would change the H-2A program in ways that would benefit agricultural employers’ interests but also would provide farmworkers with protections against the potential for abuses, virtually all of which are lacking in the Department’s proposal. In other words, the potential prejudice if the extension is not allowed is one-sided – on the workers.

In summary, under the circumstances, a 45 day comment period is inadequate and does not comport with either the Administrative Procedure Act or the Due Process Clause. We ask that you extend the comment period to 90 days. For further information, please contact Bruce Goldstein or Virginia Ruiz at Farmworker Justice, 1126 16<sup>th</sup> Street, N.W., Suite 270, Washington, D.C. 20036, (202) 293-5420.

Sincerely,

Farmworker Justice

AFL-CIO

California Rural Legal Assistance Foundation.

California Rural Legal Assistance, Inc.

Centro Campesino, Inc. (MN)

Change to Win

Farm Labor Organizing Committee, AFL-CIO

(continued on following page)

Farmworker Legal Services (Bangor, Michigan)  
Florida Legal Services, Inc.  
Friends of Farmworkers  
International Brotherhood of Teamsters  
League of United Latin American Citizens  
MAFO, A Partnership of Farmworker Organizations  
Mexican American Legal Defense and Educational Fund (MALDEF)  
National Council of La Raza  
National Employment Law Project  
National Farm Worker Ministry  
Northwest Workers Justice Project  
Organización en California de Líderes Campesinas, Inc.  
Pineros y Campesinos Unidos del Noroeste (PCUN, Oregon)  
Service Employees International Union  
Student Action with Farmworkers  
Texas RioGrande Legal Aid  
UMOS (Wisconsin)  
United Farm Workers  
United Farm Workers Foundation  
United Food and Commercial Workers International Union